

Sales of electricity and natural gas are not subject to Retailers' Occupation Tax or Use Tax. Electricity and natural gas are taxed under the Electricity Excise Tax Law and the Gas Revenue Tax Act or Gas Use Tax Law. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

August 21, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 29, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

It is my understanding that when greater than 75% of electricity and gas consumed by a company is for use in that of a warehouse and/or factory environment, that company should be exempt from state utility taxes.

Please advise the necessary steps to properly file for this exemption. Should you have any questions or need further information, you may reach me by phone.

I appreciate your quick response to this inquiry.

DEPARTMENT'S RESPONSE:

Illinois does not provide for the general type of exemption for electricity and gas you have described in your letter for manufacturing or warehouse purposes.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). Sales of electricity and natural gas are not subject to Retailers' Occupation Tax or Use Tax.

Please note for your general information that under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the enclosed copy of 86 Ill. Adm. Code 130.330. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation. As you will note at Section 130.330, the exemption does not include items such as supplies, coolants, lubricants, adhesives, solvents,

items of personal apparel, coal, fuel oil, electricity, natural gas, artificial gas, steam, refrigerants or water.

Electricity is subject to tax under the Electricity Excise Tax Law. Natural gas purchased in-State is taxed under the Gas Revenue Tax Act and natural gas obtained from out-of-State is taxed under Gas Use Tax Law.

The Electricity Excise Tax Law became effective August 1, 1998. See 35 ILCS 640/1 et seq. This tax is imposed upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. The incidence of this tax is on the consumers of electricity and is collected by the consumers delivering supplier. There are limited exemptions from tax in this law. Persons using electricity to manufacture products for resale are not exempt from paying the tax to their delivering suppliers. However, please note that business that qualify as high impact businesses under Section 5.5 of the Illinois Enterprise Zone Act (20 ILCS 655/5.5) or certified business enterprises under the Section 9-222.1 of the Public Utilities Act are exempt from Electricity Excise Tax to the extent of such exemption and during the period in which the exemption is in effect.

The sale of gas or gas services in Illinois is subject to taxation under the Gas Revenue Tax Act (35 ILCS 615/1 et seq.). The Gas Revenue Tax Act imposes a tax upon persons engaged in the business of distributing, supplying, furnishing, or selling gas to persons for use or consumption and not for resale. Additional charges are authorized under Section 9-222 of the Public Utilities Act to be added to their customers' natural gas bills as a pass-on of such Gas Revenue Tax. There is no general exemption provided for gas used in manufacturing. However, please note that business that qualify as high impact businesses under Section 5.5 of the Illinois Enterprise Zone Act (20 ILCS 655/5.5) or certified business enterprises under the Section 9-222.1 of the Public Utilities Act are exempt from the additional charges added to their gas bills as a pass on of Gas Revenue Tax.

Beginning with bills issued by delivering suppliers on or after October 1, 2003, the use of gas in this State obtained in a purchase of out-of-state gas (that is not subject to liability under the Gas Revenue Tax Act) is taxed under the Gas Use Tax Law (P.A. 93-0031). Section 5-10 of that Law provides that the tax does not apply to gas used by business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Community affairs. There are also some exemptions provided in Section 5-50 of that Law:

- (1) Gas used by business enterprises located in an enterprise zone certified by the Department of Commerce and Economic Opportunity pursuant to the Illinois Enterprise Zone Act;
- (2) Gas used by governmental bodies, or a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes. Such use shall not be exempt unless the government body, or corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes has first been issued a tax exemption identification number by the Department of Revenue pursuant to Section 1g of the Retailers' Occupation Tax Act. A limited liability company may qualify for the exemption under this Section only if the limited liability company is organized and operated exclusively for educational purposes. The term "educational purposes" shall have the same meaning as that set forth in Section 2h of the Retailers' Occupation Tax Act;

- (3) Gas used in the production of electric energy. This exemption does not include gas used in the general maintenance or heating of an electric energy production facility or other structure;
- (4) Gas used in a petroleum refinery operation;
- (5) Gas purchased by persons for use in liquefaction and fractionation processes that produce value added natural gas byproducts for resale; and
- (6) Gas used in the production of anhydrous ammonia and downstream nitrogen fertilizer products for resale.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.